IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2351 OF 1992

Gajanan Kisan Salgar .. Petitioner

versus

Smt.Rajnibai Anil Alandkar & ors. .. Respondents

...

Mr.P.D. Dalvi for the petitioner.

Mr.Shrishal Sakhare for the respondent nos.1 to 3.

CORAM : D.G. KARNIK, J

DATED : 26th August 2004

P.C:-

1. By this petition, the petitioner tenant challenges the judgement and order dated 3rd April 1992 passed by the 3rd Addl. District Judge, Solapur dismissing Civil Appeal No.60 of 1989 and thereby confirming a decree for possession passed in favour of the respondents.

2. The petitioner is a tenant of the suit premises which original belonged to Padmakar Baburao Alandkar. Padmakar died in March 1974 leaving behind him widow Charusheelabai, widowed daughter-in-law Rajnibai and her children. Charusheelabai is also reported to have died in July 1980. The agreed rent of the suit premises is Rs.45/-p.m. The petitioner was in arrears of rent from 1st May 1982. Therefore, by a notice of demand dated 17th December 1982 Rajnibai and her children who are the respondents herein demanded arrears of rent as well as possession. The petitioner failed to pay the arrears of rent within a period of one month from the date of the notice. The respondents, therefore, filed a suit bearing regular Civil suit no.279 of 1983 against the petitioner for possession on the ground of default. By a judgement and order dated 20th December 1988, the trial Court decreed the suit for possession as well as for arrears of rent. An appeal filed by the petitioner was dismissed by the District Court on 3rd April 1992. That judgement is impugned in this petition.

3. The learned counsel for the petitioner submits

that the notice of demand dated 17th December 1982 was not legal and valid. By the notice, the respondents have demanded the rent from 1st May 1982 to 31st December 1982 @ Rs.45/- p.m. According to the learned counsel for the petitioner, the rent for the month of December 1982 had not become due on 17th December 1982 and therefore, the respondents were not entitled to demand rent for the month of December 1982. The notice thus made an excessive demand of rent and was not legal and valid. Assuming that the rent for the month of December 1982 was not due, admittedly, rent from 1st August 1982 to 30th November 1982 was due. Thus rent of 7 months was due which was not paid despite demand. In Chaganlal Mulchand Vs. Narayan Jagannath reported in 1983 Mah.L.J. 254, a Division Bench of this Court has held that notice of demand does not become invalid merely because it makes an excessive demand. If the demand is excessive, the tenant must pay atleast the amount of rent which is due. The petitioner, therefore, ought to have paid the rent atleast upto November 1982 which he failed to do. The appellate Court was right in holding that the petitioner was in arrears of rent for a period of more than six months and had failed to pay the same inspite of notice of demand.

4. The learned counsel for the petitioner then contends that there was some dispute between Charusheela, the widow of Padmakar and the present respondents as to who should recover the rent. Charusheelabai had informed the petitioner not to pay rent to the respondents. The rent was not paid to the respondents because of the dispute between the respondents and Charusheelabai. Admittedly, Charusheelabai had died before the suit notice, and on the date of the suit notice, she was not alive. It is also not disputed that respondents are the heirs of Padmakar and Rajnibai, the respondent no.1, was recovering rent on behalf of all the respondents. The petitioner therefore, was bound to pay the rent to the respondent no.1. There is no dispute about the amount of standard rent. Despite notice of demand, the petitioner failed to pay the rent within one month of the notice of demand.

5. In the circumstances, the decree for possession passed by the two Courts below concurrently is just and proper. There is no merit in the petition which is hereby dismissed.

6. Rule discharged with no order as to costs.

D.G. KARNIK, J